

**Testimony of John Katz
Deputy Associate General Counsel
Federal Energy Regulatory Commission
Before the Subcommittee on Energy and Water**

**Committee on Energy and Natural Resources
United States Senate**

Hearing on S. 3265

September 19, 2012

Chairman Shaheen, Ranking Member Lee, and Members of the Subcommittee:

My name is John Katz and I am Deputy Associate General Counsel for Energy Projects at the Federal Energy Regulatory Commission. I appear today as a Commission staff witness. The views I express are my own and not necessarily those of the Commission or of the Chairman or any individual Commissioner. I appreciate the opportunity to appear before you to discuss S. 3265.

I. Background

Section 10(e)(1) of the Federal Power Act (FPA) provides that persons, states, and municipalities to which the Commission has issued a license to operate non-federal hydropower facilities must pay to the United States reasonable annual charges in an amount to be fixed by the Commission for, among other things, “recompensing [the United States] for the use, occupancy, and enjoyment of its lands or other property.” Section 17 of the FPA states that such charges will be paid into the U.S. Treasury, with 12.5 percent being allocated to “Miscellaneous Receipts,” 50 percent being paid into the Reclamation Fund, and the remaining

37.5 percent being paid by the Secretary of the Treasury to the state within which the lands at issue are located (there is an exception for proceeds from Indian reservations, all of which are credited to the Tribes).

FPA section 24 provides that any lands of the United States included in any proposed hydropower project shall, from the date of filing of a project application, be reserved from entry, location, or other disposal until otherwise directed by the Commission or by Congress. If the Commission determines that the power development potential of reserved power sites will not be injured or destroyed by location, entry, or selection under the public land laws, the Secretary of the Interior will declare the lands open to location, entry, or selection, under any conditions imposed by the Commission and “subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of [Part I of the FPA], which right shall be expressly reserved in every patent issued for such lands.”

It has been the Commission’s policy for many years that, where federal lands subject to a power site reservation are transferred to a licensee, the licensee still must pay annual charges for the use of the lands, given that the United States retains the power interest in the lands. The Commission has no record of the amount of acreage that falls into this category, because the Commission assesses federal land use charges based on the amount of federal acreage that each licensed project occupies (typically, taken from information in a license application or

license order), and for this purpose there is no practical distinction between lands that are wholly owned by the United States and those that have been transferred to a private entity subject to a power site reservation. Unless a licensee elects to identify any acreage that has been transferred from federal ownership but is still subject to a section 24 power site reservation, the Commission does not have that information.

II. S. 3265

S. 3265 would revise section 10(e) of the FPA to provide that those federal lands as to which the Commission assesses annual charges to hydropower licensees will not include land that has been sold, exchanged, or otherwise transferred from federal ownership, notwithstanding the retention by the United States of a power site reservation on those lands.

Commission staff has no position on the proposed legislation. S. 3265 would not affect either the Commission's ability to protect the developmental and non-developmental values set forth in the FPA or the Commission's funding. The Commission will assess annual charges for the use, occupancy, and enjoyment of federal lands in any manner that Congress directs.

III. Conclusion

This concludes my testimony. I will be happy to answer any questions you may have.